

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**MICHAEL BROOKS,**

**Plaintiff,**

**v.**

**Civil No. 9:02-CV-446  
(GLS/DEP)**

**GLENN S. GOORD, Commissioner of D.O.C.S.;  
DONALD SELSKY, Director of Special Housing;  
LT. GLENN GASSELIN, Hearing Officer; and  
SGT. B. MURRAY, Inmate Assistant,**

**Defendants.**

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**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PLAINTIFF:**

MICHAEL BROOKS  
Plaintiff *Pro Se*  
98-A-638110  
Elmira Correctional Facility  
P.O. Box 500  
Elmira, New York 14902-0500

**FOR THE DEFENDANT:**

HON. ELIOT SPITZER  
Attorney General  
State of New York  
615 Erie Boulevard West  
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Syracuse, New York 13204

PATRICK F. MACRAE  
Assist. Attorney General

**Gary L. Sharpe**  
**U.S. District Judge**

**MEMORANDUM-DECISION AND ORDER**

**I. Introduction**

Plaintiff *pro se* Michael Brooks brings this action pursuant to 42 U.S.C. § 1983. He alleges that the defendants failed to afford him minimal Fourteenth Amendment procedural safeguards during a disciplinary hearing which resulted in his confinement in a Special Housing Unit (SHU) for 456 days. Pending are Brooks' objections to Magistrate Judge David Peebles' Report-Recommendation. This court accepts the Report-Recommendation in its entirety.<sup>1</sup>

**II. Procedural History**

Brooks commenced this action on March 25, 2002. *Dkt. No. 1*. Defendants moved for summary judgment on October 31, 2003. *Dkt. No. 26*. On October 26, 2004, Judge Peebles issued a Report-Recommendation which recommended granting in part and denying in part the defendants' motion. *Dkt. No. 35*. Brooks objected. *Dkt. No. 36*.

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<sup>1</sup>The Clerk is hereby directed to attach the Report-Recommendation to constitute a complete record of the court's decision on this matter.

### **III. Discussion**<sup>2</sup>

#### **A. Standard of Review**

The Court reviews the objected to findings and recommendations in a magistrate judge's report-recommendation *de novo*. See 28 U.S.C. § 636(b)(1)(C). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The Court may also receive further evidence or recommit the matter to the magistrate judge with instructions. *Id.*

#### **B. Summary of Report-Recommendation**

Judge Peebles recommended that defendant Goord be dismissed from this case for lack of personal involvement. As to the remaining defendants, he recommended granting summary judgment only on Brooks' second and eighth causes of action, both related to officer bias. More specifically, Judge Peebles found no evidence in the record from which a reasonable trier of fact could conclude that Brooks' was denied an impartial hearing officer. *Report-Recommendation* at 14-15; *Dkt. No.* 35. He further noted that it was unclear how the fact that Lt. Gasselin had assumed the

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<sup>2</sup>The court adopts the factual summary in Judge Peebles' Report-Recommendation, and assumes familiarity with the facts alleged in Brooks' complaint. *Dkt. Nos.* 35, 1.

role of Brooks' inmate assistant could support a due process deprivation claim. *Id.* at n.6

### **C. Objections**

Brooks has objected to the Report-Recommendation in the form of a "motion" to set aside the Report to allow him to finish discovery or to respond to the defendants' motion for summary judgment. In his motion, Brooks does not respond to any substantive portion of the Report-Recommendation, but seems only to explain why he did not complete discovery or respond to the summary judgment motion. A review of docket entries reveals that the Motion for Summary Judgment had been pending for some time and thus Brooks had ample opportunity to request an extension of time to respond but failed to do so. *See Dkt. No. 26.* Moreover, the docket shows that Brooks had in the past made requests for additional time in other matters pertaining to his case. *See Dkt. Nos. 21, 24.* Accordingly, for the reasons articulated in Judge Peebles report-recommendation, this court grants the defendants summary judgment on the second and eighth causes of action.

### **IV. Conclusion**

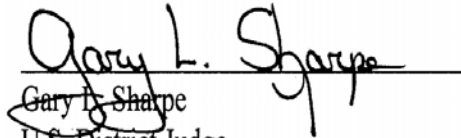
Wherefore, it is hereby

**ORDERED**, that the October 26, 2004 Report-Recommendation of Magistrate Judge Peebles is accepted; and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Memorandum-Decision and Order upon the parties.

**IT IS SO ORDERED.**

Dated: October 31, 2005  
Albany, New York

  
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Gary L. Sharpe  
U.S. District Judge